



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

SB2093

Introduced 2/25/2005, by Sen. Kimberly A. Lightford

#### SYNOPSIS AS INTRODUCED:

305 ILCS 5/10-17.7	
410 ILCS 535/12	from Ch. 111 1/2, par. 73-12
750 ILCS 45/5	from Ch. 40, par. 2505
750 ILCS 45/6	from Ch. 40, par. 2506
750 ILCS 45/7	from Ch. 40, par. 2507

Amends the Illinois Public Aid Code. Provides that the rules of the Illinois Department of Public Aid shall provide that every administrative determination of paternity, including those in which the mother and alleged father voluntarily acknowledge paternity in the form required by the Department, must be accompanied by genetic testing documentation supporting the determination. Provides that if an alleged father fails to respond to a notice, or fails to comply with an administrative order to submit to genetic testing, the Department may apply to the court for a summons and order compelling the alleged father to submit to genetic testing at a specified time and place. Provides that if the alleged father fails to comply with the summons or order, the Department may seek to enforce the court order with contempt proceedings. Amends the Illinois Parentage Act of 1984. Provides that in an action to declare the non-existence of the parent and child relationship and in any action to determine the existence of the father and child relationship, except those based upon the presumptions of paternity provided for the Act, the judgment shall not be rendered unless DNA tests have been conducted. Amends the Vital Records Act. Provides that voluntary acknowledgement of paternity must be accompanied by the results of DNA tests, conducted by an expert qualified as an examiner of blood or tissues types, showing the man to be the natural father of the child. Makes other changes.

LRB094 10879 LCB 41423 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Illinois Public Aid Code is amended by  
5 changing Section 10-17.7 as follows:

6 (305 ILCS 5/10-17.7)

7 Sec. 10-17.7. Administrative determination of paternity.  
8 The Illinois Department may provide by rule for the  
9 administrative determination of paternity by the Child and  
10 Spouse Support Unit in cases involving applicants for or  
11 recipients of financial aid under Article IV of this Act and  
12 other persons who are given access to the child support  
13 enforcement services of this Article as provided in Section  
14 10-1, including persons similarly situated and receiving  
15 similar services in other states. The rules shall extend to  
16 cases in which the mother and alleged father voluntarily  
17 acknowledge paternity in the form required by the Illinois  
18 Department or agree to be bound by the results of genetic  
19 testing or in which the alleged father has failed to respond to  
20 a notification of support obligation issued under Section 10-4  
21 and to cases of contested paternity. Any presumption provided  
22 for under the Illinois Parentage Act of 1984 shall apply to  
23 cases in which paternity is determined under the rules of the  
24 Illinois Department. The rules shall provide for notice and an  
25 opportunity to be heard by the responsible relative and the  
26 person receiving child support enforcement services under this  
27 Article if paternity is not voluntarily acknowledged, and any  
28 final administrative decision rendered by the Illinois  
29 Department shall be reviewed only under and in accordance with  
30 the Administrative Review Law. The rules shall provide that  
31 every administrative determination of paternity, including  
32 those in which the mother and alleged father voluntarily

1 acknowledge paternity in the form required by the Illinois  
2 Department, must be accompanied by genetic testing  
3 documentation supporting the determination. Determinations of  
4 paternity made by the Illinois Department under the rules  
5 authorized by this Section shall have the full force and effect  
6 of a court judgment of paternity entered under the Illinois  
7 Parentage Act of 1984.

8 In determining paternity in contested cases, the Illinois  
9 Department shall conduct the evidentiary hearing in accordance  
10 with Section 11 of the Parentage Act of 1984, except that  
11 references in that Section to "the court" shall be deemed to  
12 mean the Illinois Department's hearing officer in cases in  
13 which paternity is determined administratively by the Illinois  
14 Department.

15 Whenever any alleged father fails to respond to a notice  
16 served on him pursuant to Section 10-4 or fails to comply with  
17 an administrative order to submit to genetic testing, the  
18 Illinois Department may apply to a court of competent  
19 jurisdiction for a summons and order compelling the alleged  
20 father to submit to genetic testing at a specific time and  
21 place, and upon the failure of the alleged father to comply,  
22 the Illinois Department may seek to enforce the court order  
23 with contempt proceedings.

24 ~~Notwithstanding any other provision of this Article, a~~  
25 ~~default determination of paternity may be made if service of~~  
26 ~~the notice under Section 10-4 was made by publication under the~~  
27 ~~rules for administrative paternity determination authorized by~~  
28 ~~this Section. The rules as they pertain to service by~~  
29 ~~publication shall (i) be based on the provisions of Section~~  
30 ~~2-206 and 2-207 of the Code of Civil Procedure, (ii) provide~~  
31 ~~for service by publication in cases in which the whereabouts of~~  
32 ~~the alleged father are unknown after diligent location efforts~~  
33 ~~by the Child and Spouse Support Unit, and (iii) provide for~~  
34 ~~publication of a notice of default paternity determination in~~  
35 ~~the same manner that the notice under Section 10-4 was~~  
36 ~~published.~~

1           The Illinois Department may implement this Section through  
2 the use of emergency rules in accordance with Section 5-45 of  
3 the Illinois Administrative Procedure Act. For purposes of the  
4 Illinois Administrative Procedure Act, the adoption of rules to  
5 implement this Section shall be considered an emergency and  
6 necessary for the public interest, safety, and welfare.

7 (Source: P.A. 92-590, eff. 7-1-02.)

8           Section 10. The Vital Records Act is amended by changing  
9 Section 12 as follows:

10           (410 ILCS 535/12) (from Ch. 111 1/2, par. 73-12)

11           Sec. 12. Live births; place of registration.

12           (1) Each live birth which occurs in this State shall be  
13 registered with the local or subregistrar of the district in  
14 which the birth occurred as provided in this Section, within 7  
15 days after the birth. When a birth occurs on a moving  
16 conveyance, the city, village, township, or road district in  
17 which the child is first removed from the conveyance shall be  
18 considered the place of birth and a birth certificate shall be  
19 filed in the registration district in which the place is  
20 located.

21           (2) When a birth occurs in an institution, the person in  
22 charge of the institution or his designated representative  
23 shall obtain and record all the personal and statistical  
24 particulars relative to the parents of the child that are  
25 required to properly complete the live birth certificate; shall  
26 secure the required personal signatures on the hospital  
27 worksheet; shall prepare the certificate from this worksheet;  
28 and shall file the certificate with the local registrar. The  
29 institution shall retain the hospital worksheet permanently or  
30 as otherwise specified by rule. The physician in attendance  
31 shall verify or provide the date of birth and medical  
32 information required by the certificate, within 24 hours after  
33 the birth occurs.

34           (3) When a birth occurs outside an institution, the

1 certificate shall be prepared and filed by one of the following  
2 in the indicated order of priority:

3 (a) The physician in attendance at or immediately after  
4 the birth, or in the absence of such a person,

5 (b) Any other person in attendance at or immediately  
6 after the birth, or in the absence of such a person,

7 (c) The father, the mother, or in the absence of the  
8 father and the inability of the mother, the person in  
9 charge of the premises where the birth occurred.

10 (4) Unless otherwise provided in this Act, if the mother  
11 was not married to the father of the child at either the time  
12 of conception or the time of birth, the name of the father  
13 shall be entered on the child's birth certificate only if the  
14 mother and the person to be named as the father have signed an  
15 acknowledgment of parentage in accordance with subsection (5).

16 Unless otherwise provided in this Act, if the mother was  
17 married at the time of conception or birth and the presumed  
18 father (that is, the mother's husband) is not the biological  
19 father of the child, the name of the biological father shall be  
20 entered on the child's birth certificate only if, in accordance  
21 with subsection (5), (i) the mother and the person to be named  
22 as the father have signed an acknowledgment of parentage and  
23 (ii) the mother and presumed father have signed a denial of  
24 paternity.

25 (5) Upon the birth of a child to an unmarried woman, or  
26 upon the birth of a child to a woman who was married at the time  
27 of conception or birth and whose husband is not the biological  
28 father of the child, the institution at the time of birth and  
29 the local registrar or county clerk after the birth shall do  
30 the following:

31 (a) Provide (i) an opportunity for the child's mother  
32 and father to sign an acknowledgment of parentage and (ii)  
33 if the presumed father is not the biological father, an  
34 opportunity for the mother and presumed father to sign a  
35 denial of paternity. The signing and witnessing of the  
36 acknowledgment of parentage or, if the presumed father of

1 the child is not the biological father, the acknowledgment  
2 of parentage and denial of paternity conclusively  
3 establishes a parent and child relationship in accordance  
4 with Sections 5 and 6 of the Illinois Parentage Act of  
5 1984.

6 The acknowledgment of parentage shall be effective  
7 only if the acknowledgment is accompanied by results of  
8 deoxyribonucleic acid (DNA) tests, conducted by an expert  
9 qualified as an examiner of blood or tissues types, showing  
10 the man to be the natural father of the child.

11 The Illinois Department of Public Aid shall furnish the  
12 acknowledgment of parentage and denial of paternity form to  
13 institutions, county clerks, and State and local  
14 registrars' offices. The form shall include instructions  
15 to send the original signed and witnessed acknowledgment of  
16 parentage and denial of paternity to the Illinois  
17 Department of Public Aid.

18 (b) Provide the following documents, furnished by the  
19 Illinois Department of Public Aid, to the child's mother,  
20 biological father, and (if the person presumed to be the  
21 child's father is not the biological father) presumed  
22 father for their review at the time the opportunity is  
23 provided to establish a parent and child relationship:

24 (i) An explanation of the implications of,  
25 alternatives to, legal consequences of, and the rights  
26 and responsibilities that arise from signing an  
27 acknowledgment of parentage and, if necessary, a  
28 denial of paternity, including an explanation of the  
29 parental rights and responsibilities of child support,  
30 visitation, custody, retroactive support, health  
31 insurance coverage, and payment of birth expenses.

32 (ii) An explanation of the benefits of having a  
33 child's parentage established and the availability of  
34 parentage establishment and child support enforcement  
35 services.

36 (iii) A request for an application for child

1 support enforcement services from the Illinois  
2 Department of Public Aid.

3 (iv) Instructions concerning the opportunity to  
4 speak, either by telephone or in person, with staff of  
5 the Illinois Department of Public Aid who are trained  
6 to clarify information and answer questions about  
7 paternity establishment.

8 (v) Instructions for completing and signing the  
9 acknowledgment of parentage and denial of paternity.

10 (c) Provide an oral explanation of the documents and  
11 instructions set forth in subdivision (5) (b), including an  
12 explanation of the implications of, alternatives to, legal  
13 consequences of, and the rights and responsibilities that  
14 arise from signing an acknowledgment of parentage and, if  
15 necessary, a denial of paternity. The oral explanation may  
16 be given in person or through the use of video or audio  
17 equipment.

18 (6) The institution, State or local registrar, or county  
19 clerk shall provide an opportunity for the child's father or  
20 mother to sign a rescission of parentage. The signing and  
21 witnessing of the rescission of parentage voids the  
22 acknowledgment of parentage and nullifies the presumption of  
23 paternity if executed and filed with the Illinois Department of  
24 Public Aid within the time frame contained in Section 5 of the  
25 Illinois Parentage Act of 1984. The Illinois Department of  
26 Public Aid shall furnish the rescission of parentage form to  
27 institutions, county clerks, and State and local registrars'  
28 offices. The form shall include instructions to send the  
29 original signed and witnessed rescission of parentage to the  
30 Illinois Department of Public Aid.

31 (7) An acknowledgment of paternity signed pursuant to  
32 Section 6 of the Illinois Parentage Act of 1984 may be  
33 challenged in court only on the basis of fraud, duress, or  
34 material mistake of fact, with the burden of proof upon the  
35 challenging party. Pending outcome of a challenge to the  
36 acknowledgment of paternity, the legal responsibilities of the

1 signatories shall remain in full force and effect, except upon  
2 order of the court upon a showing of good cause.

3 (8) When the process for acknowledgment of parentage as  
4 provided for under subsection (5) establishes the paternity of  
5 a child whose certificate of birth is on file in another state,  
6 the Illinois Department of Public Aid shall forward a copy of  
7 the acknowledgment of parentage, the denial of paternity, if  
8 applicable, and the rescission of parentage, if applicable, to  
9 the birth record agency of the state where the child's  
10 certificate of birth is on file.

11 (9) In the event the parent-child relationship has been  
12 established in accordance with subdivision (a)(1) of Section 6  
13 of the Parentage Act of 1984, the names of the biological  
14 mother and biological father so established shall be entered on  
15 the child's birth certificate, and the names of the surrogate  
16 mother and surrogate mother's husband, if any, shall not be on  
17 the birth certificate.

18 (Source: P.A. 91-308, eff. 7-29-99; 92-590, eff. 7-1-02.)

19 Section 15. The Illinois Parentage Act of 1984 is amended  
20 by changing Sections 5, 6, and 7 as follows:

21 (750 ILCS 45/5) (from Ch. 40, par. 2505)

22 Sec. 5. Presumption of Paternity.

23 (a) A man is presumed to be the natural father of a child  
24 if:

25 (1) he and the child's natural mother are or have been  
26 married to each other, even though the marriage is or could  
27 be declared invalid, and the child is born or conceived  
28 during such marriage;

29 (2) after the child's birth, he and the child's natural  
30 mother have married each other, even though the marriage is  
31 or could be declared invalid, and he is named, with his  
32 written consent, as the child's father on the child's birth  
33 certificate;

34 (3) he and the child's natural mother have signed an

1 acknowledgment of paternity in accordance with rules  
2 adopted by the Illinois Department of Public Aid under  
3 Section 10-17.7 of the Illinois Public Aid Code; or

4 (4) he and the child's natural mother have signed an  
5 acknowledgment of parentage or, if the natural father is  
6 someone other than one presumed to be the father under this  
7 Section, an acknowledgment of parentage and denial of  
8 paternity in accordance with Section 12 of the Vital  
9 Records Act.

10 (b) A presumption under subdivision (a)(1) or (a)(2) of  
11 this Section may be rebutted only by clear and convincing  
12 evidence. A presumption under subdivision (a)(3) or (a)(4) is  
13 conclusive, unless the acknowledgment of parentage is  
14 rescinded under the process provided in Section 12 of the Vital  
15 Records Act, upon the earlier of:

16 (1) 60 days after the date the acknowledgment of  
17 parentage is signed, or

18 (2) the date of an administrative or judicial  
19 proceeding relating to the child (including a proceeding to  
20 establish a support order) in which the signatory is a  
21 party;

22 except that if a minor has signed the acknowledgment of  
23 paternity or acknowledgment of parentage and denial of  
24 paternity, the presumption becomes conclusive 6 months after  
25 the minor reaches majority or is otherwise emancipated.

26 (c) The presumptions in items (3) and (4) of subsection (a)  
27 of this Section shall be effective only if the acknowledgment  
28 of paternity is accompanied by results of deoxyribonucleic acid  
29 (DNA) tests, conducted by an expert qualified as an examiner of  
30 blood or tissues types, showing the man to be the natural  
31 father of the child.

32 (Source: P.A. 89-641, eff. 8-9-96; 90-18, eff. 7-1-97.)

33 (750 ILCS 45/6) (from Ch. 40, par. 2506)

34 Sec. 6. Establishment of Parent and Child Relationship by  
35 Consent of the Parties.

1           (a) A parent and child relationship may be established  
2 voluntarily by the signing and witnessing of a voluntary  
3 acknowledgment of parentage in accordance with Section 12 of  
4 the Vital Records Act or ~~7~~ Section 10-17.7 of the Illinois  
5 Public Aid Code, provided it is accompanied by the results of  
6 deoxyribonucleic acid (DNA) tests, conducted by an expert  
7 qualified as an examiner of blood and tissue types, showing the  
8 man to be the natural father of the child, or the provisions of  
9 the Gestational Surrogacy Act. The voluntary acknowledgment of  
10 parentage shall contain the social security numbers of the  
11 persons signing the voluntary acknowledgment of parentage;  
12 however, failure to include the social security numbers of the  
13 persons signing a voluntary acknowledgment of parentage does  
14 not invalidate the voluntary acknowledgment of parentage.

15           (1) A parent-child relationship may be established in  
16 the event of gestational surrogacy if all of the following  
17 conditions are met prior to the birth of the child:

18           (A) The gestational surrogate certifies that she  
19 is not the biological mother of the child, and that she  
20 is carrying the child for the intended parents.

21           (B) The husband, if any, of the gestational  
22 surrogate certifies that he is not the biological  
23 father of the child.

24           (C) The intended mother certifies that she  
25 provided or an egg donor donated the egg from which the  
26 child being carried by the gestational surrogate was  
27 conceived.

28           (D) The intended father certifies that he provided  
29 or a sperm donor donated the sperm from which the child  
30 being carried by the gestational surrogate was  
31 conceived.

32           (E) A physician licensed to practice medicine in  
33 all its branches in the State of Illinois certifies  
34 that the child being carried by the gestational  
35 surrogate is the biological child of the intended  
36 mother and intended father and that neither the

1 gestational surrogate nor the gestational surrogate's  
2 husband, if any, is a biological parent of the child  
3 being carried by the gestational surrogate.

4 (E-5) The attorneys for the intended parents and  
5 the gestational surrogate each certifies that the  
6 parties entered into a gestational surrogacy contract  
7 intended to satisfy the requirements of Section 25 of  
8 the Gestational Surrogacy Act with respect to the  
9 child.

10 (F) All certifications shall be in writing and  
11 witnessed by 2 competent adults who are not the  
12 gestational surrogate, gestational surrogate's  
13 husband, if any, intended mother, or intended father.  
14 Certifications shall be on forms prescribed by the  
15 Illinois Department of Public Health, shall be  
16 executed prior to the birth of the child, and shall be  
17 placed in the medical records of the gestational  
18 surrogate prior to the birth of the child. Copies of  
19 all certifications shall be delivered to the Illinois  
20 Department of Public Health prior to the birth of the  
21 child.

22 (2) Unless otherwise determined by order of the Circuit  
23 Court, the child shall be presumed to be the child of the  
24 gestational surrogate and of the gestational surrogate's  
25 husband, if any, if all requirements of subdivision (a)(1)  
26 are not met prior to the birth of the child. This  
27 presumption may be rebutted by clear and convincing  
28 evidence. The circuit court may order the gestational  
29 surrogate, gestational surrogate's husband, intended  
30 mother, intended father, and child to submit to such  
31 medical examinations and testing as the court deems  
32 appropriate.

33 (b) Notwithstanding any other provisions of this Act,  
34 paternity established in accordance with subsection (a) has the  
35 full force and effect of a judgment entered under this Act and  
36 serves as a basis for seeking a child support order without any

1 further proceedings to establish paternity.

2 (c) A judicial or administrative proceeding to ratify  
3 paternity established in accordance with subsection (a) is  
4 neither required nor permitted.

5 (d) A signed acknowledgment of paternity entered under this  
6 Act may be challenged in court only on the basis of fraud,  
7 duress, or material mistake of fact, with the burden of proof  
8 upon the challenging party. Pending outcome of the challenge to  
9 the acknowledgment of paternity, the legal responsibilities of  
10 the signatories shall remain in full force and effect, except  
11 upon order of the court upon a showing of good cause.

12 (e) Once a parent and child relationship is established in  
13 accordance with subsection (a), an order for support may be  
14 established pursuant to a petition to establish an order for  
15 support by consent filed with the clerk of the circuit court. A  
16 copy of the properly completed acknowledgment of parentage form  
17 shall be attached to the petition. The petition shall ask that  
18 the circuit court enter an order for support. The petition may  
19 ask that an order for visitation, custody, or guardianship be  
20 entered. The filing and appearance fees provided under the  
21 Clerks of Courts Act shall be waived for all cases in which an  
22 acknowledgment of parentage form has been properly completed by  
23 the parties and in which a petition to establish an order for  
24 support by consent has been filed with the clerk of the circuit  
25 court. This subsection shall not be construed to prohibit  
26 filing any petition for child support, visitation, or custody  
27 under this Act, the Illinois Marriage and Dissolution of  
28 Marriage Act, or the Non-Support Punishment Act. This  
29 subsection shall also not be construed to prevent the  
30 establishment of an administrative support order in cases  
31 involving persons receiving child support enforcement services  
32 under Article X of the Illinois Public Aid Code.

33 (Source: P.A. 92-16, eff. 6-28-01; 93-921, eff. 1-1-05.)

34 (750 ILCS 45/7) (from Ch. 40, par. 2507)

35 Sec. 7. Determination of Father and Child Relationship; Who

1 May Bring Action; Parties.

2 (a) An action to determine the existence of the father and  
3 child relationship, whether or not such a relationship is  
4 already presumed under Section 5 of this Act, may be brought by  
5 the child; the mother; a pregnant woman; any person or public  
6 agency who has custody of, or is providing or has provided  
7 financial support to, the child; the Illinois Department of  
8 Public Aid if it is providing or has provided financial support  
9 to the child or if it is assisting with child support  
10 collection services; or a man presumed or alleging himself to  
11 be the father of the child or expected child. The complaint  
12 shall be verified and shall name the person or persons alleged  
13 to be the father of the child.

14 (b) An action to declare the non-existence of the parent  
15 and child relationship may be brought by the child, the natural  
16 mother, or a man presumed to be the father under subdivision  
17 (a)(1) or (a)(2) of Section 5 of this Act. Actions brought by  
18 the child, the natural mother or a presumed father shall be  
19 brought by verified complaint.

20 After the presumption that a man presumed to be the father  
21 under subdivision (a)(1) or (a)(2) of Section 5 has been  
22 rebutted, paternity of the child by another man may be  
23 determined in the same action, if he has been made a party.

24 (b-5) An action to declare the non-existence of the parent  
25 and child relationship may be brought subsequent to an  
26 adjudication of paternity in any judgment by the man  
27 adjudicated to be the father pursuant to the presumptions in  
28 Section 5 of this Act if, as a result of deoxyribonucleic acid  
29 (DNA) tests, it is discovered that the man adjudicated to be  
30 the father is not the natural father of the child. Actions  
31 brought by the adjudicated father shall be brought by verified  
32 complaint. If, as a result of the deoxyribonucleic acid (DNA)  
33 tests, the plaintiff is determined not to be the father of the  
34 child, the adjudication of paternity and any orders regarding  
35 custody, visitation, and future payments of support may be  
36 vacated.

1       (b-7) In an action to declare the non-existence of the  
2 parent and child relationship and in any action to determine  
3 the existence of the father and child relationship, except  
4 those based upon the presumptions in Section 5 of this Act, the  
5 judgment shall not be rendered unless deoxyribonucleic acid  
6 (DNA) tests have been conducted pursuant to Section 11 of this  
7 Act.

8       (c) If any party is a minor, he or she may be represented  
9 by his or her general guardian or a guardian ad litem appointed  
10 by the court, which may include an appropriate agency. The  
11 court may align the parties.

12       (d) Regardless of its terms, an agreement, other than a  
13 settlement approved by the court, between an alleged or  
14 presumed father and the mother or child, does not bar an action  
15 under this Section.

16       (e) If an action under this Section is brought before the  
17 birth of the child, all proceedings shall be stayed until after  
18 the birth, except for service or process, the taking of  
19 depositions to perpetuate testimony, and the ordering of blood  
20 tests under appropriate circumstances.

21       (Source: P.A. 89-674, eff. 8-14-96; 90-18, eff. 7-1-97; 90-715,  
22 eff. 8-7-98.)